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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,246	12/20/2001	Jeffrey E. Fish	KCX-400 (15421)	9059
22827	7590	03/12/2004	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			BEFUMO, JENNA LEIGH	
			ART UNIT	PAPER NUMBER

1771

DATE MAILED: 03/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/027,246

Applicant(s)

FISH ET AL.

Examiner

Jenna-Leigh Befumo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is in response to the reply filed January 9, 2004. Claims 1 – 30 are pending.

Drawings

2. The amendments to the specification are sufficient to overcome the objections to the drawings set forth in the previous Office Action.

Double Patenting

3. Claims 1, 9, 10, and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/027787. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim in Application No. 10/027787 encompasses the scope of claims 1, 9, 10, and 11 since all the limitations of claim 1 in Application 10/027787 are in claims 1, 9, 10, and 11 of this application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. It is noted that the Applicant has stated that a terminal disclaimer will be filed at such time that the claims are otherwise deemed allowable.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1 – 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. (4,982,535) in view of Tanzer et al. (5,411,497) for the reasons of record.

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7. Claims 1 – 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. (5,938,650) for the reasons of record.

Response to Arguments

8. Applicant's arguments filed January 9, 2004 have been fully considered but they are not persuasive. The Applicant argues that the rejection based on Bjornberg et al. and Tanzer et al. would not have been obvious since the absorbent structure taught by Bjornberg et al. is different from the absorbent structure taught by Tanzer et al. (Response, pages 9 – 10). First, it is noted, that while there might be differences in structure between Bjornberg et al. and Tanzer et al., both of these references disclose forming a composite structure which creates pockets between two substrate layers by bonding the two layers together, wherein each pocket contains superabsorbent particles. Second, the combination of the two references is based on the fact that Tanzer discloses that the bonds used to form the pockets should have a low bond strength and be allowed to break apart as the superabsorbent particles absorb liquid and expand, so that the absorption of the particles will not be limited or constricted during use by the small pocket size. This teaching is relative to all composites which are bonded together to form pockets that hold superabsorbent particles regardless of whether the pockets are formed by the outer layers of the absorbent materials, as taught by Bjornberg et al., or by additional layers in the absorbent materials, as taught by Tanzer et al. Even with the structural differences between the two references, the general teaching of Tanzer et al. would translate to improved absorbency in the absorbent composite taught by Bjornberg et al. since the absorption and expansion of the superabsorbent particles would not be limited to the size of the pocket in the absorbent article. Therefore, the rejection is maintained.

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9. Additionally, the Applicant argues that it would not be obvious to modify the aspect ratio of the pockets in Baer et al. because Baer et al. has not recognized the aspect ratio of the pockets ~~is not recognized~~ as a result effective variable (Response, page 11 – 12). Particularly, the Applicant refers to MPEP §2144.05 IIB, which states only result-effective variables can be optimized. However, this section does not state that the prior art itself has to explicitly state that the variable is a result effective variable. Instead, it states that the variable must achieve a recognized result. In this case, the result of changing the aspect ratio of the pockets would be a change in the shape of the pockets as well as the total volume within the pockets. Thus, Figures 5 – 7 of Baer et al. which show that the pockets can be produced in different shapes establish that the prior art recognizes that the pockets can be formed in different shapes, and that the aspect ratio of the pockets can be changed. Additionally, it is noted that the pockets in Figures 6 and 7 appear to have an aspect ratio which is greater than 2. However, since the drawings are not necessarily to scale, the exact measurements were not relied on for the rejection. But, these figures would readily indicate to one of ordinary skill in the art that the prior art recognizes that long narrow pockets can be used to contain the particles. Finally, changing the aspect ratio of the pockets results in a change shape. It has been held that a change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Therefore, the rejection is maintained.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo
March 3, 2004



CHERYL A. JUSKA
PRIMARY EXAMINER